

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DISHOND M. DIGGS,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 2:23-cv-02156-RFB-DJA

ORDER

Plaintiff Dishond M. Diggs brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. On January 11, 2024, this Court denied Digg's incomplete application to proceed *in forma pauperis* ordered Diggs to file a fully complete application or pay the full \$405 filing fee on or before March 11, 2024. The Court warned Diggs that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$405 filing fee for a civil action by that deadline.

Diggs filed a second incomplete application to proceed *in forma pauperis*. The Court denied the second incomplete application to proceed *in forma pauperis* and gave Diggs an extension until April 15, 2024, to file a complete application. Diggs filed two more incomplete applications to proceed *in forma pauperis*. On May 14, 2024, the Court denied the incomplete applications and extended the deadline for Plaintiff to file a complete application until June 10, 2024. The Court reiterated that this case would be subject to dismissal without prejudice if Plaintiff failed to file a complete application to proceed *in forma pauperis* or pay the \$405 filing fee in full by June 10, 2024. That deadline has expired and Diggs did not file a fully complete application to proceed *in forma pauperis*, pay the full \$405 filing fee, or otherwise respond to the Court's May 14, 2024 order.

1 District courts have the inherent power to control their dockets and “[i]n the exercise of
2 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.
3 Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may
4 dismiss an action based on a party’s failure to obey a court order or comply with local rules. See
5 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
6 with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal
7 Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
8 determining whether to dismiss an action on one of these grounds, the Court must consider: (1)
9 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
10 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
11 cases on their merits; and (5) the availability of less drastic alternatives. See In re
12 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v.
13 U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987)).

14 The first two factors, the public’s interest in expeditiously resolving this litigation and the
15 Court’s interest in managing its docket, weigh in favor of dismissal of Diggs’s claims. The third
16 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
17 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
18 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
19 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
20 the factors favoring dismissal.

21 The fifth factor requires the Court to consider whether less drastic alternatives can be used
22 to correct the party’s failure that brought about the Court’s need to consider dismissal. See Yourish
23 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
24 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
25 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
26 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
27 prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the “initial granting
28 of leave to amend coupled with the warning of dismissal for failure to comply[.]” have been

1 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
2 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
3 779 F.2d 1421, 1424 (9th Cir. 1986).

4 Because this action cannot realistically proceed until and unless Diggs either files a fully
5 complete application to proceed *in forma pauperis* or pays the \$405 filing fee for a civil action,
6 the only alternative is to enter a fourth order setting another deadline. But the reality of repeating
7 an ignored order is that it often only delays the inevitable and squanders the Court’s finite
8 resources. The circumstances here do not indicate that this case will be an exception: there is no
9 hint that Diggs needs additional time or evidence that he did not receive the Court’s order. Setting
10 another deadline is not a meaningful alternative given these circumstances. So the fifth factor
11 favors dismissal.

12 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
13 favor of dismissal.

14 **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice based on
15 Diggs’s failure to file a fully complete application to proceed *in forma pauperis* or pay the full
16 \$405 filing fee in compliance with this Court’s January 11, 2024, March 13, 2024, and May 14,
17 2024, orders. The Clerk of Court is directed to enter judgment accordingly and close this case. No
18 other documents may be filed in this now-closed case. If Diggs wishes to pursue his claims, he
19 must file a complaint in a new case.

20 **IT IS FURTHER ORDERED** that Diggs may move to reopen this case and vacate the
21 judgment by filing a motion for reconsideration of this order. In this motion, the Plaintiff is
22 required to explain what circumstances delayed him from paying the filing fee or filing the
23 application to proceed *in forma pauperis*. If the Court finds there to be good cause or a reasonable
24 explanation therein, the Court will reopen the case and vacate the judgment.

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26 **DATED:** June 20, 2024

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE